



CLOSED CASE SUMMARY

ISSUED DATE: NOVEMBER 5, 2020

FROM: DIRECTOR ANDREW MYERBERG
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2020OPA-0140

Allegations of Misconduct & Director's Findings

Named Employee #1

Allegation(s):		Director's Findings
# 1	5.001 - Standards and Duties 10. Employees Shall Strive to be Professional	Not Sustained (Training Referral)
# 2	6.220-POL-3 - Conducting a Detention to Issue a Notice of Infraction, Issue a Citation, and Other Exceptions 2. Officers Can Detain Subjects to Identify Them in Order to Issue a Notice of Infraction	Not Sustained (Lawful and Proper)
# 3	6.220 - Voluntary Contacts, Terry Stops & Detentions 3. Officers Will Document All Other Detentions	Not Sustained (Lawful and Proper)
# 4	15.370 - Sexual Assault Investigation 15.370-TSK-1 Patrol Officer Investigating a Sexual Assault Incident	Sustained
Imposed Discipline		
Oral Reprimand		

This Closed Case Summary (CCS) represents the opinion of the OPA Director regarding the misconduct alleged and therefore sections are written in the first person.

EXECUTIVE SUMMARY:

The Complainant, a caseworker at the Downtown Emergency Services Center (DESC), alleged that Named Employee #1 (NE#1) was unprofessional and dismissive when he stopped the Subject, who was the Complainant's former client.

ADMINISTRATIVE NOTE:

Based on discussions with the chain of command during the discipline meeting, which are discussed more fully below, OPA changes its finding in Allegation #1 from Sustained to Not Sustained – Training Referral.

SUMMARY OF INVESTIGATION:

On February 26, 2020, Named Employee #1 (NE#1) was conducting an emphasis patrol with a squad of other bicycle officers in the vicinity of Third Avenue and Pine Street. This was the location of a recent shooting and emphasis patrols were ordered by the chain of command as part of a crime reduction strategy. While on patrol, NE#1 and the other officers passed two individuals, the Complainant and the Subject. Both were smoking cigarettes within 25 feet of a covered bus stop and the entryway of a business, which constitutes a civil infraction.



NE#1 stopped and issued the Subject a warning about smoking near a doorway. NE#1 did not cite the Subject and immediately turned away to continue patrolling. As NE#1 was leaving, he heard the Subject state that he was an “asshole.” On hearing this, NE#1 turned around and rode his bicycle back. NE#1 requested the Subject’s identification and, when asked why, told the Subject “you just called me an asshole.” When the Subject replied that he was a mental health patient, NE#1 stated: “that doesn’t matter.”

NE#1 told the Subject that he was being issued a warning. The Complainant, who was standing by during the interaction, intervened and said that the Subject was just on his way from one place to another. NE#1 replied that he “came to educate [the Subject] nicely about not having smoking in the bus zone.” Another officer arrived and stood by. The other officer’s arrival caused the Subject to become upset. He asked the officers not to surround him because he had recently suffered a sexual assault. He began to cry, and the Complainant attempted to comfort him.

The Subject, still upset, provided his identification to NE#1. NE#1 thanked him and said, “see how easy that was without calling people assholes?” The Subject apologized to NE#1. NE#1 said that he was just trying to give the Subject a warning and that the Subject using an expletive did not help the situation. The Subject apologized again. NE#1 explained that the reason for the contact was that SPD was conducting zero tolerance emphasis patrols in the area. The Subject began to cry again, and NE#1 said that it was “not the end of the world,” and that he was not using force. NE#1 asked the Complainant if he was the Subject’s friend. The Complainant said he was, and NE#1 reiterated that he was only issuing a warning. The Subject thanked NE#1, and the contact ended. OPA notes that at no time did NE#1 acknowledge the Subject’s statement regarding a sexual assault.

OPA interviewed the Complainant and the Subject. The Complainant explained that the Subject, who has underlying mental health issues, was his former client and that they met by coincidence on public transit. The Subject told the Complainant about a traumatic sexual assault from the evening before and the Complainant decided to escort the Subject to the bus. A woman at the bus stop gave the Subject a cigarette, which the Subject smoked to calm himself. It was at this time that NE#1 initiated contact with the Subject. The Complainant explained that the Subject had been “processing” his thoughts aloud when he used an expletive about NE#1. The incident happened as described above. The Complainant characterized NE#1 and the backing officer as acting aggressively and failing to de-escalate.

The Subject recounted the incident consistent with the above. He stated that he felt NE#1’s behavior was inappropriate, particularly after the Subject notified him about the recent assault. He is aware that SPD has policies and training regarding sexual assault. Because of the trauma and flashbacks he was experiencing during the incident as well as the incident itself, it did not then occur to the Subject to request a police report. He has since determined that he will not be seeking police assistance regarding the assault.

OPA interviewed NE#1. He noted that, on the date in question, he and other officers had been specifically directed by SPD command staff to engage in zero tolerance enforcement in the area in which the incident occurred. This was intended to improve community confidence due to recent shootings, and to demonstrate that SPD was taking enforcement action. NE#1 stated that it is extremely common for individuals to direct profanity at police officers and that NE#1 does not generally stop people when they do, as it is not a crime.

NE#1 stated that he initially delivered a verbal warning and did not activate BWV or stop riding his bicycle to do so. As he was riding away, it occurred to him that he should give the Subject documentation of the stop in the form of a business card, warning, or citation. When he heard the Subject use the expletive, he turned around and saw that the



Subject was still smoking, which he took to mean that his verbal warning had not worked. NE#1 noted that observing the Subject smoking constituted probable cause for a citation, meaning that the contact was not a Terry stop.

NE#1 stated that he heard the Subject tell him about the sexual assault. He said he theorized that the Subject was using it as a “defensive mechanism to deflect me from talking to him.” He stated that it is common for individuals to recount negative experiences to encourage officers not to talk to them further. He noted that there were many police in the area and that the Subject could have reported the assault to any one of them had he desired to do so. During the interview, the SPOG Representative noted that counselors are mandatory reporters and that the Complainant could have requested a report as well but did not.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegation #1

5.001 - Standards and Duties 10. Employees Shall Strive to be Professional

SPD Policy 5.001-POL-10 requires that SPD employees “strive to be professional.” The policy further instructs that “employees may not engage in behavior that undermines public trust in the Department, the officer, or other officers” whether on or off duty. (SPD Policy 5.001-POL-10.) The policy further states the following: “Any time employees represent the Department or identify themselves as police officers or Department employees, they will not use profanity directed as an insult or any language that is derogatory, contemptuous, or disrespectful toward any person.” (Id.) Lastly, the policy instructs Department employees to “avoid unnecessary escalation of events even if those events do not end in reportable uses of force.” (Id.)

Based on OPA’s review of the video, OPA has three main concerns with how NE#1 approached the Subject and this incident. First, OPA felt that NE#1 treated the Subject in a brusque and, at times, aggressive manner. This was the case even though NE#1 was aware that the Subject suffered from mental illness, the Subject was very emotional, and the Subject reporting being sexually assaulted earlier that day. Second, OPA believes to be problematic that NE#1 appeared to turn around to re-engage with and warn the Subject because the Subject called him an “asshole.” While NE#1 did not cite the Subject at that time, it could be argued that his law enforcement action was taken more to address being called an “asshole” rather than to educate the Subject on the law, as NE#1 claimed. Indeed, this is supported by his statements made to the Subject immediately upon re-contacting him. Third, when the Subject alerted NE#1 that he had experienced a sexual assault less than a day prior, NE#1 took no action concerning this allegation. OPA understands that NE#1’s assigned task was carrying out zero tolerance patrols so that the community would have trust in public safety. However, ignoring statements about serious violent crime does not serve these goals and does not increase public trust and confidence in NE#1 and SPD.

OPA initially recommended that this allegation be Sustained; however, at the discipline meeting in this matter, NE#1’s chain of command argued that this finding should be reversed. They asserted that NE#1 did not make any profane or derogatory statements and that he was well within his rights to turn around and educate the Subject. The chain of command further believed that it would have a chilling effect on other officers if this incident was deemed unprofessional, even if the contact was not optimal.

OPA concurs that NE#1 did not use profanity or derogatory language towards the Subject. OPA also agrees that NE#1 had the legal right to contact and then re-contact the Subject. However, that he could do so, does not mean



that he should have here, and it also does not mean that he should have utilized the approach that he did. That being said, OPA has changed its previous opinion that the totality of NE#1's conduct was so egregious to have violated policy. In reaching this finding, OPA notes that NE#1 has had a long SPD career without any prior Sustained findings for professionalism. He is also not an officer that has recently been on SPD's radar for acting inconsistent with this or other policies. As such, OPA construes this incident to be an outlier and, instead of recommending discipline believes that re-training is the appropriate remedy.

- **Training Referral:** NE#1's and his chain of command should watch the BWV of his contact with the Subject. They should discuss NE#1's approach towards the Subject, his decision to re-contact him, and other ways in which NE#1 could have more appropriately handled this situation. This retraining and counseling should be documented, and this documentation should be maintained in an appropriate database.

Recommended Finding: **Not Sustained (Training Referral)**

Named Employee #1 - Allegation #2

6.220-POL-3 - Conducting a Detention to Issue a Notice of Infraction, Issue a Citation, and Other Exceptions 2. Officers Can Detain Subjects to Identify Them in Order to Issue a Notice of Infraction

SPD Policy 6.220-POL-3(2) states that, where officers have probable cause to issue a notice of infraction for any City ordinance violation, they may detain the subject for a reasonable amount of time to identify the subject. If the subject refuses to provide identification, the officer may request that a fingerprinting kit be brought to the scene.

OPA finds that NE#1 had adequate justification to request the Subject's identification and, indeed, to compel it if necessary. NE#1's probable cause was based on his observation of a violation being committed and, indeed, on observing that the Subject continued the violation after being advised to stop. While OPA has concerns about the direction the incident took, it agrees that NE#1 did not violate this policy. For this reason, OPA recommends that this allegation be Not Sustained – Lawful and Proper.

Recommended Finding: **Not Sustained (Lawful and Proper)**

Named Employee #1 - Allegation #3

6.220 - Voluntary Contacts, Terry Stops & Detentions 3. Officers Will Document All Other Detentions

SPD Policy 6.220-POL-4(1) requires that officers document all Terry stops using a Field Contact report. Within the Field Contact report, officers are instructed to "clearly articulate the objective facts they rely upon in determining reasonable suspicion." (SPD Policy 6.220-POL-4(1).)

For the same reasons as above (see Named Employee #1 – Allegation #2), OPA recommends that this allegation be Not Sustained – Lawful and Proper.

Recommended Finding: **Not Sustained (Lawful and Proper)**



Named Employee #1 - Allegation #4

15.370 - Sexual Assault Investigation 15.370-TSK-1 Patrol Officer Investigating a Sexual Assault Incident

SPD Policy 15.370-TSK-1 sets forth the expectations for patrol officers who are investigating sexual assault incidents. The policy lays out 13 individual actions the officers are expected to take. (See SPD Policy 15.370-TSK-1.)

OPA finds that NE#1's handling of this incident did not meet the standards SPD imposes when patrol officers become aware that a sexual assault incident occurred. OPA understands that NE#1 may well have had numerous interactions—including with persons suffering from mental illness—in which individuals fabricate negative interactions to either derail police investigations or simply out of mental compulsion or a desire for sympathy. However, this is not and cannot be a reason for officers to ignore credible reports of serious crime. At a bare minimum, NE#1 should have asked the Complainant whether he wanted to make a report. In OPA's opinion, it was not sufficient, as the Guild Representative suggested, to simply expect that another mandatory reporter would take action.

As NE#1 did not comply with this policy, OPA recommends that this allegation be Sustained.

Recommended Finding: **Sustained**